

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GONZALO ARAMBULA,)	No. C 05-0933 CW (PR)
)	
Plaintiff,)	
)	<u>ORDER DENYING AS MOOT</u>
v.)	<u>MOTION TO AMEND COMPLAINT,</u>
)	<u>DISMISSING ACTION, AND</u>
J. TANGEN, Correctional Officer,)	<u>DENYING IN FORMA PAUPERIS</u>
ET AL.,)	<u>STATUS</u>
)	
Defendants.)	(Docket nos. 2, 6)

BACKGROUND

Plaintiff Gonzalo Arambula is a prisoner of the State of California who is incarcerated at Salinas Valley State Prison (SVSP). He has filed this civil rights action under 42 U.S.C. § 1983 and seeks leave to proceed in forma pauperis. Venue is proper in this Court because the injuries complained of occurred in Monterey County, which is located within the Northern District of California. See 28 U.S.C. § 1391; 28 U.S.C. § 84.

STANDARD OF REVIEW

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and

(2) that the alleged violation was committed by a person acting under the color of State law. West v. Atkins, 487 U.S. 42, 48 (1988). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Terracom v. Valley National Bank, 49 F.3d 555, 558 (9th Cir. 1995) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

DISCUSSION

In his complaint and "Motion for Amended Complaint"¹ Plaintiff, who is a diabetic, asserts that on July 2, 2004, while in a wheelchair, he went to the SVSP medical clinic to obtain a blood sugar check. As appears to be his ongoing practice, he signed a medical refusal form, CDC Form 7225, refusing medical treatment (i.e., insulin). He alleges that correctional officer J. Tangen confiscated Plaintiff's copy of the refusal form by placing his hand on his pepper spray as an implied threat when taking the form. Plaintiff claims that confiscation of his copy violated his constitutional rights.

At second level review he was provided a copy of his form and offered review of his health records with the option of taking notes. He was told that he would have to pay for copies of his other forms, just like everyone else. No evidence of staff misconduct was found at the second or third levels of review.

Plaintiff wants to be provided with "every single copies of my

¹A plaintiff may amend his complaint once as a matter of course at any time before a responsive pleading is served. See Fed. R. Civ. P. 15(a). Accordingly, his motion is DENIED as moot.

1 refusals," a reprimand to Tangen and \$100,000.

2 Plaintiff alleges that under State law he is entitled to free
3 copies of his refusals to receive insulin treatment. Even if this
4 is so, a violation of State law does not necessarily amount to a
5 constitutional violation. The deprivation of a State created
6 liberty interest occurs only where State statutes or regulations
7 narrowly restrict the power of prison officials to impose the
8 deprivation, that is, give the inmate a kind of right to avoid it,
9 and where the liberty in question is one of "real substance." See
10 Sandin v. Conner, 515 U.S. 472, 477-87 (1995). In the latter
11 scenario "real substance" generally will be limited to freedom from
12 (1) restraint that imposes "atypical and significant hardship on the
13 inmate in relation to the ordinary incidents of prison life," id. at
14 484, or (2) State action that "will inevitably affect the duration
15 of [a] sentence," id. at 487.

16 Recently, the Supreme Court clarified that "the touchstone of
17 the inquiry into the existence of a protected, state-created liberty
18 interest in avoiding restrictive conditions of confinement is not
19 the language of regulations regarding those conditions but the
20 nature of those conditions themselves 'in relation to the ordinary
21 incidents of prison life.'" Wilkinson v. Austin, 125 S. Ct. 2384,
22 2394 (2005) (quoting Sandin, 515 U.S. at 484). This inquiry
23 requires a factual comparison between conditions in the plaintiff's
24 former status and his new status, examining the hardship caused by
25 the challenged action in relation to the basic conditions of life as
26 a prisoner. Jackson v. Carey, 353 F.3d 750, 755 (9th Cir. 2003).
27 Under the rationale of Sandin and Wilkinson the Court finds that
28 Plaintiff has no constitutional right to free photocopies of his
refusal forms because the denial of any State created right to such

1 copies does not amount to a significant hardship in relation to the
2 basic conditions of Plaintiff's life as a prisoner.

3 Plaintiff's allegation of staff misconduct rising to the level
4 of an Eighth Amendment violation also is without merit. Even if
5 Defendant Tangen did place his hand on his pepper spray, thereby
6 leading Plaintiff to believe that Tangen was threatening him into
7 giving up his refusal form, allegations of mere threats are not
8 cognizable under § 1983. See Gaut v. Sunn, 810 F.2d 923, 925 (9th
9 Cir. 1987) (mere threat does not constitute constitutional wrong,
10 nor do allegations that naked threat was for purpose of denying
11 access to courts compel contrary result).

12 The Court finds that the allegations in Plaintiff's complaint
13 and Motion for Amended Complaint fail to state a constitutionally
14 cognizable claim for relief as a matter of law and that leave to
15 amend would be futile.

16 CONCLUSION

17 For the foregoing reasons, the Court orders as follows:

18 1. The motion to amend the complaint is DENIED as moot.

19 (Docket no. 6.)

20 2. The action is DISMISSED with prejudice and without leave to
21 amend.

22 3. Leave to proceed in forma pauperis is DENIED.

23 The Clerk of the Court shall enter judgment and close the file.

24 IT IS SO ORDERED.

25 DATED: 11/9/05



26
27 CLAUDIA WILKEN
28 United States District Judge